THE HON'BLE SRI JUSTICE K.C. BHANU

On Monday, the twenty second day of August

Two thousand and Five.

W.P.No.12514 of 2001

Challarapu Simhachalam, s/o late Laxmu Naidu, 57 years, Attender, St.Joseph Girls High School, Parvathipuram, Vizianagaram District and another.

……Petitioners

And

Director of School Education, A.P., Hyderabad and others.

…Respondents.

O R D E R:

This writ petition is filed to declare the action of the respondents in demanding recovery from salary of the petitioners 1 and 2 to a tune of Rs.18,512-90 ps., and Rs.15,910-70 ps., respectively in pursuant to the audit letter Rop.No.1/Audit/86 dated 5.7.1986, as arbitrary and illegal.

Before adverting to the question as to whether the impugned proceedings issued by the 2nd respondent suffers from any legal infirmity requiring any interference as such by this Court, in exercise of its writ jurisdiction, it may be necessary, briefly, to note the relevant facts leading to the filing of this writ Petition. The petitioners were appointed in the 3rd respondent school on 1.12.1969 and 1.1.1981, respectively, and their services have been regularized on 1.1.1981 and 1.7.1965, respectively, and 4th respondent has been incurring the expenditure of the petitioners. The management sent the to the D.E.O. for the conversion of the

contingent staff into Class-IV with effect from the dates of regularization. When the 3rd and 4th respondents were preparing salary bills and the same were accepted by the 2nd respondent and presented to the Bank, which disbursed the amount. As the matters stood thus, the department Auditor issued proceedings in dated 5.7.1986. The petitioners submit that in view of the orders passed by this Court in W.P.18102 of 1987 and W.P.No.13615 of 1987, relating to Bobbili and Parvathipuram school employees, wherein it was held that the recovery of the amount paid to such staff is illegal and so, the petitioners filed the present writ petition seeking the relief.

Inter alia, the respondents filed counter denying all the allegations made in the affidavit filed by the petitioner and contended that the request of the petitioners cannot be considered as per orders issued basing on the G.O.Ms.No.237 Education Department dated 4.4.1985.

The learned counsel for the petitioners contended that the petitioners were already converted into Class-IV employees in the year 1981 and they are being paid the salaries by the approval from the District Educational Officer and by virtue of Government Order issued on 4.4.1985 orders of the recovery has been directed which is not permissible under law and therefore, pray to allow the writ petition.

On the other hand, the learned Government Pleader for School Education, contended that as per orders dated 23.6.1961, the petitioners are entitled for absorption with effect from 1.1.1981 and any amount paid prior to that date is liable to be recovered from them.

As seen from the impugned proceedings dated 5.7.1986, it is clear that the orders converting of contingent employees as Class-IV employees were issued vide proceedings dated 19.2.1982 by the D.E.O, Vizianagaram, in pursuance of the instructions contained in G.O.Ms.No.30 Finance and Planning (Fin.Wing & PRC VI) Department dated 1.2.1980 with effect from 1.1.1981 and 1.4.1981 as the case may, but in pursuance of G.O.Ms.No.237 dated 4.4.1985, the amounts paid to the employees working in aided institutions consequent on conversion in the scale of Rs.250/- is irregular and is liable to be recovered. Since the conversion was made in pursuance of the rules prevailing at the time of conversion as per G.O.Ms.No.30

dated 1.2.1980, the same cannot be said to be irregular. The impugned proceedings did not indicate the conversion of the petitioners into contingent employees who were working in the aided school is contrary to the G.O.Ms.No.30 dated 1.2.1980. Therefore, the subsequent G.O.Ms.No.237 dated 4.4.1985 cannot be made applicable to the persons who were already converted as Class-IV employees in the year 1981. In view of the above reasons, the impugned proceedings are liable to be set aside and are accordingly set aside.

The Writ petition is accordingly allowed. No order as to costs.

JUSTICE K.C. BHANU

22nd August 2005

BCS